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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for February

Foreign Corporations

Fulfilling Contracts Made in Another State Necessity of Qualification

Where a "doing business" question, involving the necessity of qualification by a foreign corporation, arises with respect to a given state, what weight, if any, should be accorded the fact that contracts related to activity in that state are approved in another state?

Interstate Commerce

Qualification has been ruled not to be necessary if the activities within a state are limited to the furtherance of interstate commerce,[1] and therefore it appears to be immaterial whether the contracts related to such activities are approved in the state under consideration or elsewhere.[2] This principle has been applied to the extent that unlicensed foreign corporations have been permitted to prevail in suits concerned with interstate commerce transactions, even though the companies were also engaged in doing intrastate business, forbidden them by state statutes, under circumstances where the interstate transactions were distinct from the intrastate business.[3]

Intrastate Business

While there are decisions indicating that an unlicensed foreign corporation could maintain suit in certain states upon a contract entered into in a state other than that in which the suit was brought,[4] it is to be noted that if contracts call for the carrying on of intrastate business in a state in which the contracting corporation is not licensed, the company will, by completing the contracts, be regarded as "doing business" in that state and will subject itself to liability for the penalties provided for failure to obtain authority to do business.[5] The fact that the contracts are signed in another state will not have the effect of eliminating such

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[1] *Furst & Thomas v. Brewster et al.*, 282 U. S. 493; *York Mfg. Co. v. Colley*, 247 U. S. 21; *International Textbook Co. v. Pigg*, 217 U. S. 91.

[2] *Butler Bros. Shoe Co. v. United States Rubber Co.*, 156 Fed. 1, certiorari denied, 212 U. S. 577; *Sioux Remedy Co. v. Cope*, 235 U. S. 197; *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282; *Larkin Co. v. Commonwealth*, 172 Ky. 106, 189 S. W. 3.

[3] *Marshall-Wells Co. v. Kramlich et al.*, 267 Pac. 611; *Smilansky v. Mandel Bros. et al.*, 236 N. W. 866; *Lloyd Thomas Co. v. Grosvenor*, 144 Tenn. 347, 233 S. W. 669; *Burton Explosives, Inc. v. Strider et al.*, 158 S. W. 2d 731; *Alexander Film Co. v. Lazeres & Morfesy*, 7 S. W. 2d 599; *Little v. Armstrong Mfg. Co.*, 58 S. W. 2d 849.

[4] *Bonham National Bank v. Grimes Pass Placer Mining Co., Ltd.*, 18 Ida. 629, 111 Pac. 1078; *Burch Mfg. Co., Inc. v. McKee* (Iowa) 2 N. W. 2d 98; *Holder v. Aultman Miller & Co.*, (Mich.) 169 U. S. 81; *Manhattan Overseas Co., Inc. v. Camden Beverage Co.*, 125 N. J. L. 239, 15 Atl. 2d 217; *Transradio Press Service, Inc. v. Whitmore*, (N. M.) 137 P. 2d 309; *Bertolf Bros., Inc. v. Leuthardt*, 26 N. Y. S. 2d 114.

[5] *The Vaccinol Products Corp. v. State for Use of Phillips County*, 156 S. W. 2d 250; *State ex rel. Independence County v. Alexander Film Co.*, Circuit Court, Independence County, Arkansas, Nov. 30, 1938, (Arkansas Corporation Tax Service, ¶ .409); *State ex rel. Lay v. Arthur Greenfield, Inc.*, 205 S. W. 619.

liability.* In *Thomas v. Birmingham Ry., Light & Power Co.*, 195 Fed. 340, it was said:

> "It seems clear that the place of execution of the contract is of no moment if the prior negotiations leading up to it or the subsequent performance of it constituted an engaging in business by the delinquent foreign corporation within the limits of the state. * * * The making of the express contract, when it is made outside the state, is legal. The illegality is then in the performance of it."

Domestic Corporations

Delaware.

Ruling in *Keller et al. v. Wilson & Co., Inc.*, followed by Federal District Court. Plaintiff was the owner of preferred stock of Wilson & Co., Inc., a Delaware corporation, registered in the name of a brokerage firm and held by it for her account at the time in 1935 when an amendment to the corporation's certificate of incorporation, giving effect to a plan of recapitalization, was adopted, the plan involving an elimination of the defendant corporation's accumulated dividends on its preferred stock. This suit to contest the recapitalization plan was instituted in the Federal District Court in Delaware two months after the plan was approved. During the years this action was pending, the Delaware Supreme Court, in *Keller et al. v. Wilson & Co., Inc.*, 190 Atl. 115, (The Corporation Journal, December, 1936, page 270), ruled that it was beyond the power of a Delaware corporation to destroy a preferred shareholder's right to receive accrued dividends by means of amendment of the corporate charter, and that a preferred shareholder has the right to demand that his dividends be paid in cash before any further dividends are paid on the common stock. The sole question being whether the plaintiff was entitled to the benefit of this decision, the United States District Court, D. Delaware, after an exhaustive examination of the history and status of plaintiff's ownership of her stock, concluded that this decision applied and that a decree in her favor was to be rendered. *Dunn v. Wilson & Co., Inc.*, 51 F. Supp. 655. Josiah Marvel, Jr., and James R. Morford of Wilmington, for plaintiff. Hugh M. Morris and Edwin D. Steel, Jr., of Morris, Steel, Nichols & Arsht and Aaron Finger, of Richards, Layton & Finger, of Wilmington, for defendant.

New York.

Court of Appeals reverses ruling that right of stockholder to distribution of surplus upon a reduction of capital was a vested right. The defendants were a domestic corporation and its officers and directors. The corporate defendant was organized in 1926 with a stated capital of $300,000, represented by 100,000 shares of no par

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* *E. E. Morgan Co., Inc. v. State for Use and Benefit of Phillips County*, 150 S. W. 2d 736, appeal dismissed, 62 S. Ct. 77, rehearing denied, 62 S. Ct. 175; *State for Use and Benefit of Independence County v. Tad Screen Advertising Co.*, 133 S. W. 2d 1; *State ex rel. Nelson v. The S. P. Pond Co.*, 135 Mo. App. 81.

value. In January, 1940, by a certificate of capital reduction, duly filed, the stated capital of the corporate defendant was reduced from $300,000 to $100,000 and the resulting capital surplus of $200,000 was transferred to a surplus account "for all purposes for which a surplus may be used." When this corporate action was taken the assets of the corporate defendant were of an actual value in excess of $300,000 over and above its liabilities, exclusive of its liability on its capital stock. The New York Supreme Court, Appellate Division, First Department, had ruled (*Jay Ronald Co., Inc. v. Marshall Mortgage Corp. et al.*, 40 N. Y. S. 2d 391, The Corporation Journal, June, 1943, page 420), that "at the time defendant corporation was organized and issued its stock, the shareholders had a vested right to have divided among them, in proportion to the number of their shares, any excess of the actual capital on hand over the reduced amount of the nominal capital; that such excess belongs to those who were stockholders of record on the date of the capital reduction and that their respective interests in that fund were not assigned by subsequent sales of their stock." The court had also ruled that a 1939 amendment of subd. 15, of Sec. 36, Stock Corporation Law, giving to the stockholders and directors the discretion of determining whether the capital surplus should be retained by the corporation or returned to the stockholders could not impair such a fixed and vested right, which was beyond the reach of the legislature. The Court of Appeals of New York, in reversing the judgment of the lower court, reviewed the pertinent legislation from 1882 to the present time, and concluded that "from the year 1901 to the present time no distribution of a surplus created by reduction of capital of a stock corporation has been required by the law of New York except when pursuant to statute the stockholders so decreed. In that view the 1939 statute last above indicated was in essence a declaration of what had been the law from a time long antecedently to the organization of the corporate defendant in 1926. It follows that the 1939 statute was here applicable and sanctioned the disposition of the surplus in question as made by the stockholders of the corporate defendant." *Jay Ronald Company, Inc. v. Marshall Mortgage Corp. et al.*, Court of Appeals of New York, November 24, 1943. Commerce Clearing House Court Decisions Requisition No. 312692. Harold L. Rosenstein, for plaintiff, appellant and respondent. Samuel A. Telsey, for defendant, respondent and appellant. Nathan L. Miller, Eustace Seligman, Howard T. Milman and John C. Bruton, for Breed, Abbott & Morgan et al., amici curiae.

Judgment creditor of corporation which filed certificate for voluntary dissolution under section 105, S. C. L., stayed in enforcing judgment, ratable distribution being implied. The Flexite Corporation filed a certificate for voluntary dissolution with the Secretary of State on April 5, 1943, pursuant to section 105, Stock Corporation Law. Three months later Marathon Paper Mills Company obtained a judgment against it and served a subpoena in proceedings supplementary to the judgment on its liquidating directors. The directors

then moved to stay the Marathon company from taking any proceedings to enforce or collect its judgment on the ground that the Flexite Corporation was insolvent and that to permit the judgment creditor to proceed on its judgment would give it a preference over other creditors of the corporation. The New York Supreme Court, Special Term, New York County, granted the motion, observing: "As a matter of first impression, there would be doubt as to whether a voluntary dissolution of an insolvent corporation could be had by the nonjudicial procedure of section 105. Article 9 of the General Corporation Law provides for the voluntary dissolution of corporations by judicial process and for the appointment of a receiver if the corporation is insolvent. There is no express provision in section 105 of the Stock Corporation Law for ratable distribution. However, the courts have held that the section does apply to insolvent corporations and that ratable distribution must be implied. Central Union Trust Co. of New York v. American Ry. Traffic Co., 198 App. Div. 303, 190 N. Y. S. 674, affirmed 233 N. Y. 531, 135 N. E. 905; Steinhardt Import Corp. v. Levy, 174 Misc. 184, 20 N. Y. S. 2d 360. The 1941 amendments to section 105, Laws 1941, c. 304, subsequent to these decisions, do not indicate any intention on the part of the Legislature to counteract the judicial interpretation of section 105 contained in these decisions." *In re Flexite Corporation*, 43 N. Y. S. 2d 948. Robert J. Blum of New York City, for Alfred E. Boas and Peggy S. Boas, as liquidating directors. Benjamin Rosen of Brooklyn, for Marathon Paper Mills Co. Nathaniel L. Goldstein, Atty. General of the State of New York, for the People.

South Dakota.

Stockholder seeking to maintain derivative action against officers held required to show acquisition of his stock prior to alleged wrongful acts of officers. Plaintiff instituted a stockholder's derivative action against officers and directors of his company. Having failed to state that he was a stockholder at the time of alleged wrongful acts or to show when or how he acquired his shares in the defendant corporation, the lower court had dismissed the complaint on the ground that it failed to state a claim upon which relief might be granted. Upon appeal, affirming the order of the lower court, the opinion of the Supreme Court of South Dakota contained the following observations: "The question presented on appeal is whether a stockholder may maintain a derivative action of this nature charging mismanagement or malfeasance on the part of the officers of the corporation prior to the acquisition of stock. The question has not been decided in this jurisdiction, and there appears to be a direct conflict of authority as to the right of a subsequent stockholder to complain of prior acts. The rule obtaining in the federal courts and in many of the state courts is that to entitle a minority stockholder to attack a wrongful transaction it must appear that he was a stockholder at the time of the commission of the act complained of or that his shares of stock have devolved on him since by operation of law."

"A contrary view is expressed in other jurisdictions to the effect that the cause of action for the wrongdoing of officers and directors is a part of the assets in which a stockholder has a transferable interest, that a transfer of his shares includes the ownership of incidents thereto, and that it is immaterial whether the stockholder who seeks to vindicate the right was such at the time of the wrongful transaction." "An action of this nature by a stockholder in behalf of himself and other stockholders similarly situated has its foundation in equity. If a corporation refuses to prosecute an action in its favor, equity to prevent a failure of justice disregards the corporate entity and permits suit to be brought and maintained by a stockholder to protect rights beneficially belonging to him. The right exists because of special injury to him. We think that the decisions holding that a subsequent stockholder cannot maintain, for want of equity, a derivative suit complaining of the prior acts and management of the corporation, are sound." *Jepson v. Peterson et al.*, 10 N. W. 2d 749. Dan McCutchen of Belle Fourche, for appellant. Philip & Leedom of Rapid City, for respondents.

Foreign Corporations

Arkansas.

Service on former statutory agent of withdrawn foreign corporation, effected three months after withdrawal, upheld. Petitioner Maryland corporation sought, in the Supreme Court of Arkansas, to obtain an order prohibiting the Chancellor from proceeding in an action against it because of lack of jurisdiction over it. Petitioner had obtained authority to do business in Arkansas on September 24, 1937, appointing an agent for the service of process at that time. It withdrew from that state on December 27, 1940 and cancelled its agent's authority to act for it. The action in the Chancery Court was begun three months after withdrawal, on March 27, 1941 by serving the former statutory agent, the Secretary of State and the Auditor of State, based on a cause of action related to property in Arkansas, in connection with which a predecessor of petitioner had assumed liability. The Supreme Court of Arkansas denied the petition, ruling that service upon the former statutory agent or upon the Auditor of State was good service, and remarking: "Act 255, approved April 1, 1931, § 41, permits domestic corporations to be sued during a period of three years after dissolution. By analogy, and under the equal protection clause of the federal constitution, a foreign corporation is subject to suit for three years after withdrawing from the State, on contracts made subsequent to its entry into the State and to be performed here." *Crown Central Petroleum Corporation v. Speer, Chancellor*, 174 S. W. 2d 547. Karl F. Steinmann of Baltimore, Md., and Davis & Allen of El Dorado, for petitioner. Gaughan, McClellan & Gaughan of Camden and Claude Crumpler and T. O. Abbott of El Dorado, for respondent. Commerce Clearing House Court Decisions Requisition No. 310378.

Mississippi.

Contract of highway construction company held void and unenforceable where obtaining of authority to do business was delayed until contract was two-thirds completed. Complainant Alabama corporation, engaged in highway construction work, established a temporary office in Mississippi, in charge of its vice-president and manager, with a view of eventually submitting a bid to do work in that state. Five months later it obtained a privilege tax license under Section 60(a) of the Privilege Tax Law, 1932, permitting it to submit bids. Ten months after establishing the office it became a successful bidder to construct six miles of highway in Simpsons County, the formal contract being executed two months later. The work was completed approximately a year from the date of the formal contract, on which suit was brought a year later to recover additional compensation for extra work required by the defendant below, the State Highway Commission, and also certain damages and delay on account of expenses and delay occasioned by the alleged failure of the highway engineers to perform their duties on time, etc. The complainant had not, however, obtained authority to do business in Mississippi until after the work had been in progress for about eight months after the signing of the formal contract and at a time when at least two-thirds of the working days allowed for the completion of the job had expired. The court below ruled that the company was doing business in Mississippi and that there could be no recovery even on account of anything that transpired subsequent to the date of qualification, unless the circumstances under which the extra work was performed amounted to an original and new undertaking or agreement, either express or implied, arising after the corporation had qualified to do business as a foreign corporation in the state. The Mississippi Supreme Court affirmed the judgment of the lower court, also ruling that the company was doing business and that the contract sued upon was, under the Mississippi statutes, void and unenforceable. The court also indicated that decisions to the effect that an isolated transaction does not require qualification did not apply to complainant's situation. *Newell Contracting Company v. State Highway Commission,** Mississippi Supreme Court, November 22, 1943. Commerce Clearing House Court Decisions Requisition No. 312026; 15 So. 2d 700. Jones & Ray of Jackson, for appellant. Greek L. Rice, Attorney General, by Jefferson Davis, Assistant Attorney General, Green & Green and Lotterhos, Travis & Dunn of Jackson, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service, Mississippi, page 505.**

New York.

Service on unlicensed foreign corporation not doing business in state, attempted by serving director in state, set aside. In an action in which an unlicensed foreign corporation appeared specially for the purpose of having service of process upon it set aside, the United

States District Court, E. D., New York, vacated the service with the following observations: "The Becker Corporation was a Connecticut corporation. It was not doing any business at the time, but was practically liquidated, it did not have any office or place of business in the State of New York, was not authorized to do business in the State of New York, and at the time of such attempted service, or of the commencement of this action, the defendant was not in the State of New York engaged in the business of said corporation at said time, or times, and that the service on Esther Becker as a director of the corporation was not good service on the corporation. The attempted service of the summons and complaint upon The Becker Corporation should be quashed, vacated and set aside." *United Shoe Machinery Corporation v. Becker et al.*, 51 F. Supp. 802. Stull & Gore (Richard J. Stull, of counsel), of New York City, for the motion. Kaye, Scholer, Fierman & Hays (Milton Kunen, of counsel), of New York City, opposed.

Service on president of corporation whose only corporate activity in state was entering into the contract of purchase of equipment sued upon, vacated. Defendant New Jersey corporation had no office, agent or officer acting as such in New York. It had never conducted any business anywhere beyond the holding of title to a piece of real estate located in New Jersey. Defendant's president, however, was regularly employed in a business in New York City having no connection with the affairs of the defendant. The issue arose through the purchase of a piece of equipment for defendant's New Jersey property. The contract of purchase was discussed and entered into in the office where defendant's president was employed, and it was there that service was made. The City Court of New York, New York County, granted defendant's motion to vacate service of summons and complaint, regarding its activities as insufficient to bring the company within the jurisdiction. *Schmidt et al. v. Bellevue-Montclair Apartments, Inc.*,* 44 N. Y. S. 2d 298. Leopold Blumberg of New York City for defendant, for the motion. Putney, Twombly & Hall of New York City, for plaintiffs, opposed.

* The full text of this opinion is printed in **The Corporation Tax Service, New York**, page 20,815.

Taxation

Florida.

Accounts receivable arising from Florida activities held subject to intangibles property tax. A partnership, a member of the New York Stock Exchange, maintained branch offices in Florida, where sales were made to Florida customers on margin. The securities were purchased in New York and physical custody retained there as security. The partnership received a commission as brokers and interest on the "debit balance" due from the Florida customer. In an action seeking an injunction to restrain the assessment and collection of intangible

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l make a good Transfer Agent for your company, too.

property taxes on such debit balances or accounts receivable, the bill of complaint alleged that the domiciliary ownership was in New York, the Florida Supreme Court affirmed the order of the Chancellor dismissing the cause on final hearing, saying, with respect to the allegation that the domiciliary domicile was in New York: "We are unable to find the testimony in the record to support this allegation. The customer resides in Florida; the original payment was made by him in Florida at the branch office; interest and broker commissions are paid in Florida; Florida law protects the branch office and business transactions had therein; Florida courts provide forums for adjudication of differences arising out of the transactions, and for these several reasons it cannot be said that the 'debit balances' originated in New York, as alleged, to the exclusion of the State of Florida." *Smith et al. v. Lummus,** 14 So. 2d 897. Rinehart & Carroll and George H. Salley of Miami and Hall, Cunningham & Haywood of New York City, for appellants. J. Tom Watson, Atty. General, Lawrence A. Truett, Asst. Atty. General, and Ward & Ward and Joseph Weintraub of Miami, for appellees. (*Appeal dismissed by the Supreme Court of the United States for want of a substantial Federal question, December 13, 1943; Docket No. 502. See page 137.*)

* The full text of this opinion is printed in **The Corporation Tax Service**, Florida, page 2832

Indiana.

Consignee selling merchandise ruled subject to gross income tax on commissions received from consignor, regardless of the fact that contract between parties required consignee to reimburse consignor for gross income tax paid on latter's gross receipts. The appellee, the plaintiff below, brought this action to recover gross income taxes paid on commissions it had received for acting as agent or consignee of Sears, Roebuck and Co. in the sale of merchandise at retail at stores which the appellee owned and operated in the state. During the periods for which the tax was questioned, appellee had paid the gross income tax upon the commissions it received and Sears, Roebuck and Co. had paid the gross income tax on the gross receipts from the sale of its merchandise by its agent, the appellee. Under the contract between these parties, appellee was to reimburse its consignor for the amount of gross income tax paid by the latter, appellee being responsible for "all license fees, liens and taxes assessed under present laws." The law provided that in the case of consignment sales, the tax was to be payable on gross receipts by the consignee. Appellee contended it was exempt from the payment of the gross income tax upon its own income, consisting of sales commissions earned, because it had reimbursed Sears, Roebuck and Co. for the gross income tax resulting from the sale of its principal's goods. The Indiana Supreme Court reversed a judgment which upheld this contention. The court regarded the agreement between the parties, so far as it related to reimbursement of the tax of Sears,

Roebuck and Co. by the appellee, as "of no present concern." It emphasized that the law charged the consignee with the responsibility of seeing that the principal's gross income tax was paid and concluded that there was no basis for the contention that the consignee was not chargeable with the tax upon the income from sales' commissions, and the recovery sought of this last mentioned tax was therefore denied. *Department of Treasury v. Spindler Co., Inc.*,* Indiana Supreme Court, November 22, 1943. Commerce Clearing House Court Decisions Requisition No. 311891. James A. Emmert, Attorney General, and Winslow Van Horne and John J. McShane, Deputy Attorney Generals, for appellant. Loring & Douglas of Valparaiso, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service, Indiana, page 1455.**

Ohio.

Property tax upheld where assessed upon imported raw materials held in owner's Ohio warehouse pending manufacture. Appellant corporation, having its principal place of business in Xenia, Ohio, where it was engaged in the manufacture of rope, twine and similar products, resisted the imposition of a property tax upon the hemp and other raw materials purchased for the purpose of conversion in the course of manufacturing and stored in appellant's warehouse pending such conversion at the time of the assessment. These raw materials originated in foreign countries, but appellant was not the importer of them, being rather a purchaser subsequent to the arrival of the goods in the United States under a contract to take them. The record disclosed that the goods were purchased by appellant from New York agents of the sellers under written contracts which specifically provided that the sales were made f. o. b. port of entry in this country (i.e., landed) and that title was to remain in the seller until the goods were fully paid for. The final invoices were made out by sellers' agents after the arrival and weighing of the goods at port of entry. All payments were made to the sellers' agents. These agents are exclusively representatives of the sellers and receive no compensation from appellant. After the goods had been cleared through customs, the agents of the sellers made rail shipments to appellant under straight bills of lading. No sales were made to appellant c. i. f. The Ohio Supreme Court upheld the assessment, after a detailed examination of all the circumstances, making the following observations: "That appellant's contracts gave rise to imports cannot be questioned. But the fact remains that the purchases and deliveries were made in the United States and that while interstate commerce was involved after the goods were landed, foreign commerce or imports were not." "Assuming that appellant was the importer, these goods had so come to rest as to be mingled with the mass of property in this country when the state tax was levied thereon. This tax could not have the effect of intercepting

the import nor did it deny to the import the privilege of becoming incorporated in the general mass of local property unless such tax was made." *The Hooven & Allison Company v. Evatt,** Ohio Supreme Court, November 24, 1943. Commerce Clearing House Court Decisions Requisition No. 312641. Thomas C. Lavery and Marcus E. McCallister, for appellant. Thomas J. Herbert, Attorney General, and Aubrey A. Wendt, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service, Ohio, page 2703.**

Texas.

Texas Supreme Court affirms ruling that "mail order offices," where merchandise is sold from samples or catalogs, are to be considered chain stores in calculating the chain store tax. In *Montgomery Ward & Co., Inc. v. The State of Texas,* 169 S. W. 2d 997, (The Corporation Journal, June, 1943, page 428), the Court of Civil Appeals, Austin, held that "mail order offices," where merchandise is sold from samples or catalogs, are to be considered chain stores for the purpose of calculating the chain store tax. Upon appeal, the judgment of the lower court has been affirmed by the Texas Supreme Court, which ruled: "We approve both the holding and reasoning of the Court of Civil Appeals that title to the merchandise passes, under the company's sales plan, at the order office when the customer examines and accepts it there. The company does not part with its control of the merchandise until that time. We overrule the company's point alleging that the Court of Civil Appeals erred in failing to hold that its sales are made on a 'sale or return' basis. It is urged in support of its allegation of error, that the courts have consistently held that contracts similar to those under consideration are contracts of 'sale and return.' We cannot agree. It is not so held in this state." The court observed that title to the merchandise sold at such offices does not pass from the company to the customer until the latter has approved it upon examination at the order office, and concluded that such a sale "is a sale at that office, that is, at the company's 'store' as the term is defined by the tax statute." *Montgomery Ward & Co., Inc. v. The State of Texas,** 175 S. W. 2d 218. Commerce Clearing House Court Decisions Requisition No. 312095. Goldsmith & Bagey of Austin and John A. Barr and Harvey L. Hensel of Chicago, Ill., for petitioner. Gerald C. Mann, Attorney General, Billy Goldberg and Cecil C. Rotsch, Assistant Attorney General, of Austin, for respondent.

* The full text of this opinion is printed in **The Corporation Tax Service. Texas, page 5320.**

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ARKANSAS. Docket No. 311. *McLeod, Commissioner of Revenues v. J. E. Dilworth Company et al.*, 171 S. W. 2d 62. (The Corporation Journal, October, 1943, page 16.) Gross receipts tax—solicitation by traveling representatives, followed by shipment into state in interstate commerce. **Petition for writ of certiorari filed, August 31, 1943. Certiorari granted, October 25, 1943.**

FLORIDA. Docket No. 502. *Smith et al. v. Lummus*, 14 So. 2d 897. (The Corporation Journal, March, 1943, page 107.) State taxation of intangible personalty—taxable situs of "debit balance." **Appeal filed, November 23, 1943. December 13, 1943:** *"Per curiam:* The motion to dismiss is granted and the appeal is dismissed for the want of a substantial federal question. *Metropolitan Life Ins. Co. v. New Orleans*, 205 U. S. 395; *Liverpool Ins. Co. v. Board of Assessors*, 221 U. S. 346; *Curry v. McCanless*, 307 U. S. 357, 368." ***Rehearing denied, January 17, 1944.***

INDIANA. Docket No. 355. *Department of Treasury of Indiana et al. v. International Harvester Co. et al.*, 47 N. E. 2d 150. (The Corporation Journal, June, 1943, page 423.) Gross income tax—sales effected by branch offices outside Indiana to dealers and users located in Indiana. **Appeal filed, September 15, 1943. Probable jurisdiction noted, October 25, 1943.**

IOWA. Docket No. 441. *State Tax Commission v. General Trading Company*, 10 N. W. 2d 659. (The Corporation Journal, October, 1943, page 18.) Liability of unlicensed foreign corporation to collection of Iowa use tax on orders solicited by traveling salesmen in state, approved in another state, from which goods were shipped in interstate commerce into Iowa. **Petition for certiorari filed, October 19, 1943. Certiorari granted, November 22, 1943.**

KENTUCKY. Docket No. 154. *Anderson National Bank et al. v. Reeves*, 170 S. W. 2d 370, 575. (The Corporation Journal, October, 1943, page 9.) Validity of Kentucky Escheat Act of 1940. **Appeal filed, July 12, 1943. Jurisdiction noted, October 11, 1943.**

MINNESOTA. Docket No. 33. *Northwest Airlines, Inc. v. State of Minnesota*, 7 N. W. 2d 691. (The Corporation Journal, March, 1943, page 351.) State taxation—assessment of Minnesota personal property tax against entire fleet of airplanes operated by Minnesota corporation in interstate commerce. **Petition for certiorari filed, April 2, 1943. Certiorari granted, May 10, 1943. Argued, October 19 and 20, 1943.**

MINNESOTA. Docket No. 291. *Union Brokerage Co. v. Jensen et al.*, 9 N. W. 2d 721. (The Corporation Journal, October, 1943, page 14.) Unlicensed foreign customhouse brokerage corporation—doing business—right to sue. **Petition for certiorari filed, August 26, 1943. Certiorari granted, October 11, 1943.**

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* Data compiled from **CCH U. S. Supreme Court Service, 1943-1944.**

Regulations and Rulings

ALABAMA—Mortgage loans on real estate in Alabama, as to which the mortgage filing tax has been paid for record thereof, held by a foreign corporation doing business in Alabama as a part of its capital assets employed in Alabama should be excluded or deducted therefrom upon computation of the annual franchise tax levied by Sec. 348, Tit. 51, Code of Alabama, 1940, on foreign corporations, whether such loans were made originally in the name or behalf of the corporation or were acquired by it by purchase, transfer and assignment. Such loans as to which the mortgage filing tax has not been paid, because of exemption of the mortgage as a federal agency or instrumentality, upon sale, transfer or assignment to a non-exempt foreign corporation, become a part of the latter's capital assets subject as such to consideration for purposes of the franchise tax. (Opinion of Attorney General to Department of Revenue, Alabama CT (Corporation Tax) Service, ¶ 304.)

CALIFORNIA—The sales tax does not apply to the sales price of property returned by a purchaser who bought under an agreement giving him the privilege of returning the merchandise, provided the retailer allows credit for the full sale price, which credit is to be applied on the purchase of other merchandise. (Opinion of Attorney General to State Board of Equalization, California Corporation Tax (CT) Service, ¶ 64-501.)

NORTH CAROLINA—The Attorney General has rendered a ruling to the effect that there is grave doubt as to whether the North Carolina licensing act for general contractors validly can be applied to any person engaged solely in the performance of construction contracts with the Federal Government even if so engaged outside an area of exclusive Federal jurisdiction. Although the contractor is not an instrumentality of the Federal Government, the Federal Government could be impeded in the performance of its functions if it should be precluded from entering into a contract with any individual except those who have been licensed and whose character and fitness have been determined by the states. Such interference could be burdensome to such an extent as to render application of the statute unconstitutional. (Opinion, Attorney General to the Licensing Board for Contractors, North Carolina CT, ¶ 78-143.)

When determining the apportionment fraction with respect to foreign corporations engaged in the business of selling, distributing or dealing in tangible personal property in North Carolina, only tangible property and sales of the company engaged in business in the State are to be included in the allocation fraction. A subsidiary is a separate entity and its property and sales are not the property and sales of such foreign corporation, its parent company. (Opinion of Attorney General to Commissioner of Revenue, North Carolina CT ¶ 15-017.)

OREGON—The 75% reduction in excise tax rates as ordered by the Tax Commission for tax years beginning in 1943 is applicable to the annual $10 minimum tax required of corporations for the privilege of doing business in the state. (Opinion, Attorney General to State Tax Commission, Oregon CT, ¶ 13-002.)

Some Important Matters for February and March

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1.—Domestic and Foreign Corporations.

ARIZONA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

CALIFORNIA—Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Franchise (Income) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

COLORADO—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 15.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15 (if corporation was organized or qualified between January 1 and June 30 of any previous year).—Domestic and Foreign Corporations.

Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

DELAWARE—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations making certain payments of dividends, interest or other income to citizens or residents of Delaware during 1943.

DOMINION OF CANADA—Returns of Information at the source due on or before February 29.—Domestic and Foreign Corporations.

GEORGIA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

GEORGIA—(Continued)

Report of Resident Stockholders and Bondholders due on or before March 1.—Domestic and Foreign Corporations.

Intangible Property Tax Return due on or before March 15. —Domestic and Foreign Corporations.

IDAHO—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between January 15 and February 29.—Domestic and Foreign Corporations.

IOWA—Income Tax Return and Returns of Information at the source due on or before March 31.—Domestic and Foreign Corporations.

Returns of Tax Withheld at the source due on or before March 31.—Domestic and Foreign Corporations.

KANSAS—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Report and Franchise Tax due on or before March 31.—Domestic and Foreign Corporations.

KENTUCKY—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

LOUISIANA—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Capital Stock Statement due on or before March 1.—Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MARYLAND—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

MINNESOTA—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

MISSISSIPPI—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

Income Tax Returns due on or before March 15.—Domestic and Foreign Corporations.

MONTANA—Annual Report of Capital Employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Return of Net Income due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

NEVADA—Annual Statement of Business due not later than the month of March.—Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due on or before April 1.—Domestic Corporations.

NEW MEXICO—Franchise Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before April 1.—Domestic and Foreign Corporations.

NEW YORK—Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Franchise Tax Report and Tax of Real Estate and Holding Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate and Holding Corporations.

NORTH CAROLINA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

OHIO—Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

OKLAHOMA—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OREGON—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Excise (Income) Tax Return due on or before April 1.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Tax Report and Tax, Corporate Loans Report and Tax and Bonus Tax Report due on or before March 15.—Domestic Corporations.

Franchise Tax Report and Tax, Corporate Loans Tax Report and Bonus Tax Report due on or before March 15.—Foreign Corporations.

RHODE ISLAND—Annual Report due during February.—Domestic and Foreign Corporations.

Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual License Tax Report due during February.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due before March 1.—Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

UNITED STATES—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Income and Excess-Profits Tax Return due on or before March 15.—Domestic and Foreign Corporations having an office or place of business in the United States.

UTAH—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Income (Franchise) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

VERMONT—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.

Income (Franchise) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due March 1.—Domestic Corporations.

WISCONSIN—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, 5, N. Y.

What Constitutes Doing Business. (Revised to October 1, 1943.) A 181-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

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Contracts You Can't Enforce. Interesting case-histories which show advisability of contractor getting lawyer's advice before undertaking construction work outside his home state, even for federal government.

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Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

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Think fast, brother: When you meet and talk with one of the wounded, are you going to feel all right about what *you've* done——about the amount of War Bonds you've taken?